

### REMARKS

The above amendments are submitted to secure allowed and allowable subject matter identified by the Examiner in the Office Action dated April 7, 2005. Reconsideration and allowance are requested.

Claims 1-40 and 44-52 are pending in this Application. By this amendment, claims 41-43 and 53-56 are canceled without prejudice. Cancellation of the claims should in no way be construed as an acquiescence to any of the Examiner's rejections and was done solely to more particularly point out and distinctly claim the invention to expedite the prosecution of the application. Applicant reserves the right to pursue the claims as originally filed in this or a separate application(s).

#### Allowed Claims

The Examiner is thanked for his indications of allowed claims 1, 2, 20, 21, 39, and 40.

#### Withdrawn Claims

The restriction requirement as set forth in the Office Action of February 16, 2005 is understood to divide the claims first between *methods* (claims 41-43) and *apparatus* (claims 1-40 and 44-56) and then between thirteen different species of apparatus.

To expedite prosecution, Applicants have canceled *method* claims 41-43, without prejudice.

However, it appears that the allowed generic apparatus claims now permit recapture of all of the non-elected species and rejoinder is therefore requested for these dependent claims.

The distinguishing features of the various apparatus species, as understood by the Applicants, can be summarized by the following table:

Species	Drawings	Claims	Features
1	Figures 3 and 4	4, 23, 47 and 51	head cooling (tissue covering) apparatus having a plurality of spray jets
2	Figures 13 and 14	44	head cooling (tissue covering) apparatus having an inlet for pressurized air
3	Figure 16	18 and 37	head cooling (tissue covering) apparatus having head supports / protrusions disposed on an inner surface of apparatus
4	Figure 17	8 and 27	head cooling (tissue covering) apparatus having a rigid shell
5	Figure 18	9-10 and 28-29	head cooling (tissue covering) apparatus having swivel joints for the fluid inlet and outlet
6	Figure 19	11 and 30	head cooling (tissue covering) apparatus having handles
7	Figure 20	12 and 31	head cooling (tissue covering) apparatus having a fluid inlet and fluid outlet located in proximity to each other (e.g., allowing connection to a single umbilical cord)
8	Figure 21	13 and 32	head cooling (tissue covering) apparatus having a head stabilizer component
9	Figure 23	14 and 33	head cooling (tissue covering) apparatus having removable jets (removable fluid distribution manifold)
10	Figure 26	17 and 36	head cooling (tissue covering) apparatus having two channels disposed about the edge of the apparatus
11	Figures 29 and 30	19 and 38	head cooling (tissue covering) apparatus having fluid flow channels or protrusion disposed on inner surface of apparatus
12	Figure 32	5, 16, 24, 35, 48 and 52	head cooling (tissue covering) apparatus having a vent opening
13	Figure 39	none	head cooling (tissue covering) apparatus with an elastomeric inner liner

Each of the allowed independent claims to the apparatus (claims 1, 20, 45, and 49) is generic to various species identified in the application. In addition to the claims identified in the table above, dependent claims 3, 6-7, 15, 22, 25-26 and 34 are also generic or linking claims (reciting features shown in two or more of the species).

Accordingly, rejoinder of claims 3-19, 22-38, 44, 47, 48, 51, and 52 is respectfully requested.

#### Specification Objections

The Specification has been objected to because of several informalities. By this Amendment, the informalities have been corrected. The corrections do not add new matter to the Application.

#### Claim Objections

Claims 45 and 46 are objected to under 37 CFR §1.75 as being a substantial duplicate of claims 1 and 2 and claims 49 and 50 are objected to under 37 CFR §1.75 as being a substantial duplicate of claims 20 and 21. The Applicants respectfully disagree with these objections because claims 45 and 46 are different in scope than claims 1 and 2 and claims 49 and 50 are different in scope than claims 20 and 21.

For example, in comparing claims 1 and 45, the configuration of the *head-cooling device* of claim 1 is different than the configuration *tissue covering device* of claim 45.

The head-cooling device of claim 1 generally includes a *cap* having an aspiration channel, a fluid inlet configured to receive a cooling fluid, and an aspiration channel outlet configured to remove air from the aspiration channel to *seal the rim of the cap to a subject's head*. The cap is configured to cover a portion of a subject's head and is, therefore, used to cool the head of the subject.

The tissue covering device of claim 45 generally includes a tissue covering portion having an aspiration channel, a fluid inlet configured to receive a cooling fluid, and an aspiration

channel outlet configured to remove air from the aspiration channel to seal the outer edge of the tissue covering portion to a tissue region of interest. In comparison to the cap of claim 1, the tissue covering portion of claim 45 is configured to cover *any tissue region* of interest (e.g., not limited to covering a subject's head). For example, the user could apply the device of claim 45 to a limb or abdominal area of a subject for cooling of each respective area.

As such, the scope of claim 45 is different than the scope of claim 1. The objection to claim 45 should therefore be withdrawn and claim 45 should be allowed to issue. Additionally, because claim 46 depends upon allowable claim 45, claim 46 should also be allowed to issue for at least the same reasons.

Independent claim 20 generally relates to a cooling system having a console coupled to the aforementioned *head cooling device*. Independent claim 49 generally relates to a cooling system having a console coupled to the aforementioned *tissue covering device*. Based upon the above arguments, the objection to claim 49 should also be withdrawn and claim 49 should be allowed to issue. Additionally, because claim 50 depends upon allowable claim 49, claim 50 should also be allowed to issue for at least the same reasons.

#### Prior Art Rejections

Claims 53 and 54 are rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent 6,406,447 to Thrash. Claims 55 and 56 are rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent 6,406,447 to Thrash. These claims have been cancelled and, therefore, rejections of claims based on the cited prior art are believed to be moot.

**CONCLUSION**

In view of the foregoing remarks, this Application should be in condition for allowance. A Notice to this affect is respectfully requested. If the Examiner believes, after this Response, that the Application is not in condition for allowance, the Examiner is respectfully requested to call the Applicants' Representative at the number below.

Applicants hereby petition for any extension of time which is required to maintain the pendency of this case. If there is a fee occasioned by this response, including an extension fee, that is not covered by an enclosed check, please charge any deficiency to Deposit Account No. 141449.

If the enclosed papers or fees are considered incomplete, the Patent Office is respectfully requested to contact the undersigned collect at (617) 439-2948, in Boston, Massachusetts.

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Respectfully submitted,

By 

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